(Original	Signature	of Memb	oer)

109TH CONGRESS 1ST SESSION

H.R.

To amend the Help America Vote Act of 2002 to require a voter-verified permanent paper record or hard copy under title III of such Act, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Mr.	Holt	introduced	the	following	bill;	which	was	referred	to	the	Committ	ee
		01	n									

A BILL

To amend the Help America Vote Act of 2002 to require a voter-verified permanent paper record or hard copy under title III of such Act, and for other purposes.

- 1 Be it enacted by the Senate and House of Representa-
- 2 tives of the United States of America in Congress assembled,
- 3 SECTION 1. SHORT TITLE.
- 4 This Act may be cited as the "Voter Confidence and
- 5 Increased Accessibility Act of 2005".



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1	SEC. 2. PROMOTING ACCURACY, INTEGRITY, AND SECU-
2	RITY THROUGH VOTER-VERIFIED PERMA-
3	NENT RECORD OR HARD COPY.
4	(a) Voter Verification and Audit Capacity.—
5	(1) In General.—Section 301(a)(2) of the
6	Help America Vote Act of 2002 (42 U.S.C.
7	15481(a)(2)) is amended to read as follows:
8	"(2) Voter-verification and audit capac-
9	ITY.—
10	"(A) In general.—
11	"(i) The voting system shall produce
12	or require the use of an individual voter-
13	verified paper record of the voter's vote
14	that shall be made available for inspection
15	and verification by the voter before the vot-
16	er's vote is cast. For purposes of this
17	clause, examples of such a record include a
18	paper ballot prepared by the voter for the
19	purpose of being read by an optical scan-
20	ner, a paper ballot prepared by the voter
21	to be mailed to an election official (whether
22	from a domestic or overseas location), a
23	paper ballot created through the use of a
24	ballot marking device, or a paper print-out
25	of the voter's vote produced by a touch

screen or other electronic voting machine,



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1	so long as in each case the record permits
2	the voter to verify the record in accordance
3	with this subparagraph.
4	"(ii) The voting system shall provide
5	the voter with an opportunity to correct
6	any error made by the system in the voter-
7	verified paper record before the permanent
8	voter-verified paper record is preserved in
9	accordance with subparagraph (B)(i).
10	"(iii) The voting system shall not pre-
11	serve the voter-verifiable paper records in
12	any manner that makes it possible to asso-
13	ciate a voter with the record of the voter's
14	vote.
15	"(iv) In the case of a voting system
16	which is purchased to meet the disability
17	access requirements of paragraph (3) and
18	which will be used exclusively by individ-
19	uals with disabilities, the system does not
20	need to meet the requirements of clauses
21	(i) through (iii), but shall meet the require-
22	ments described in paragraph (3)(B)(ii).

"(B) MANUAL AUDIT CAPACITY.—



1	"(i) The permanent voter-verified
2	paper record produced in accordance with
3	subparagraph (A) shall be preserved—
4	"(I) in the case of votes cast at
5	the polling place on the date of the
6	election, within the polling place in
7	the manner or method in which all
8	other paper ballots are preserved
9	within such polling place;
10	"(II) in the case of votes cast at
11	the polling place prior to the date of
12	the election or cast by mail, in a man-
13	ner which is consistent with the man-
14	ner employed by the jurisdiction for
15	preserving such ballots in general; or
16	"(III) in the absence of either
17	such manner or method, in a manner
18	which is consistent with the manner
19	employed by the jurisdiction for pre-
20	serving paper ballots in general.
21	"(ii) Each paper record produced pur-
22	suant to subparagraph (A) shall be suit-
23	able for a manual audit equivalent to that

of a paper ballot voting system.



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1	"(iii) In the event of any inconsist-
2	encies or irregularities between any elec-
3	tronic records and the individual perma-
4	nent paper records, the individual perma-
5	nent paper records shall be the true and
6	correct record of the votes cast.
7	"(iv) The individual permanent paper
8	records produced pursuant to subpara-
9	graph (A) shall be the true and correct
10	record of the votes cast and shall be used
11	as the official records for purposes of any
12	recount or audit conducted with respect to
13	any election for Federal office in which the
14	voting system is used.
15	"(C) Special rule for votes cast by
16	ABSENT MILITARY AND OVERSEAS VOTERS.—In
17	the case of votes cast by absent uniformed serv-
18	ices voters and overseas voters under the Uni-
19	formed and Overseas Citizens Absentee Voting
20	Act, the ballots cast by such voters shall serve
21	as the permanent paper record under subpara-
22	graph (A) in accordance with protocols estab-
23	lished by the Commission in consultation with

the Secretary of Defense which preserve the



1	privacy of the voter and are consistent with the
2	requirements of such Act.".
3	(2) Conforming Amendment.—Section
4	301(a)(1) of such Act (42 U.S.C. 15481(a)(1)) is
5	amended—
6	(A) in subparagraph (A)(i), by striking
7	"counted" and inserting "counted, in accord-
8	ance with paragraphs (2) and (3)";
9	(B) in subparagraph (A)(ii), by striking
10	"counted" and inserting "counted, in accord-
11	ance with paragraphs (2) and (3)"; and
12	(C) in subparagraph (B)(ii), by striking
13	"counted" and inserting "counted, in accord-
14	ance with paragraphs (2) and (3)".
15	(b) Accessibility and Voter Verification of
16	RESULTS FOR INDIVIDUALS WITH DISABILITIES.—
17	(1) In General.—Section 301(a)(3)(B) of
18	such Act (42 U.S.C. 15481(a)(3)(B)) is amended to
19	read as follows:
20	"(B)(i) satisfy the requirement of subpara-
21	graph (A) through the use of at least one direct
22	recording electronic voting system or other vot-
23	ing system equipped for individuals with disabil-
24	ities at each polling place: and



1	"(ii) meet the requirements of paragraph
2	(2)(A) by using a system that—
3	"(I) if strictly electronic, physically
4	separates the function of vote generation
5	from the functions of vote verification and
6	casting,
7	"(II) allows the voter to verify and
8	cast the permanent record on paper or or
9	another individualized, permanent medium
10	privately and independently, and
11	"(III) ensures that the entire process
12	of voter verification and vote casting is ac-
13	cessible to the voter.".
14	(2) Specific requirement of study, test-
15	ING, AND DEVELOPMENT OF ACCESSIBLE VOTER
16	VERIFICATION MECHANISMS.—
17	(A) STUDY AND REPORTING.—Subtitle C
18	of title II of such Act (42 U.S.C. 15381 et seq.)
19	is amended—
20	(i) by redesignating section 247 as
21	section 248; and
22	(ii) by inserting after section 246 the
23	following new section:



1	"SEC. 247. STUDY AND REPORT ON ACCESSIBLE VOTER
2	VERIFICATION MECHANISMS.
3	"The Commission shall study, test, and develop best
4	practices to enhance the accessibility of voter-verification
5	mechanisms for individuals with disabilities and for voters
6	whose primary language is not English, including best
7	practices for the mechanisms themselves and the processes
8	through which the mechanisms are used.".
9	(B) CLERICAL AMENDMENT.—The table of
10	contents of such Act is amended—
11	(i) by redesignating the item relating
12	to section 247 as relating to section 248;
13	and
14	(ii) by inserting after the item relating
15	to section 246 the following new item:
	"Sec. 247. Study and report on accessible voter verification mechanisms.".
16	(c) Additional Voting System Requirements.—
17	(1) REQUIREMENTS DESCRIBED.—Section
18	301(a) of such Act (42 U.S.C. 15481(a)) is amend-
19	ed by adding at the end the following new para-
20	graphs:
21	"(7) Instruction of election officials.—
22	Each State shall ensure that all election officials are
23	instructed on the right of any individual who re-
24	quires assistance to vote by reason of blindness,

other disability, or inability to read or write to be



1	given assistance by a person chosen by that indi-
2	vidual under section 208 of the Voting Rights Act
3	of 1965.
4	"(8) Prohibition of use of undisclosed
5	SOFTWARE IN VOTING SYSTEMS.—No voting system
6	shall at any time contain or use any undisclosed
7	software. Any voting system containing or using
8	software shall disclose the source code, object code,
9	and executable representation of that software to the
10	Commission, and the Commission shall make that
11	source code, object code, and executable representa-
12	tion available for inspection upon request to any per-
13	son.
14	"(9) Prohibition of use of wireless com-
15	MUNICATIONS DEVICES IN VOTING SYSTEMS.—No
16	voting system shall contain, use, or be accessible by
17	any wireless, power-line, or concealed communication
18	device at all.
19	"(10) Certification of Software and
20	HARDWARE.—All software and hardware used in any
21	electronic voting system shall be certified by labora-
22	tories accredited by the Commission as meeting the
23	requirements of paragraphs (8) and (9).
24	"(11) Security standards for voting sys-

TEMS USED IN FEDERAL ELECTIONS.—



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1	"(A) In general.—No voting system may
2	be used in an election for Federal office unless
3	the manufacturer of such system and the elec-
4	tion officials using such system meet the appli-
5	cable requirements described in subparagraph
6	(B).
7	"(B) REQUIREMENTS DESCRIBED.—The
8	requirements described in this subparagraph
9	are as follows:
10	"(i) The manufacturer and the elec-
11	tion officials shall document the chain of
12	custody for the handling of software used
13	in connection with voting systems.
14	"(ii) The manufacturer of the soft-
15	ware used in the operation of the system
16	shall provide the Commission with updated
17	information regarding the identification of
18	each individual who participated in the
19	writing of the software, including specific
20	information regarding whether the indi-
21	vidual has ever been convicted of a crime
22	involving election fraud.
23	"(iii) In the same manner and to the
24	same extent described in paragraph (8),

the manufacturer shall provide the codes



1	used in any software used in connection
2	with the voting system to the Commission
3	and may not alter such codes once the
4	election officials have certified the system
5	unless such system is recertified by such
6	election officials.
7	"(iv) The manufacturer shall meet
8	standards established by the Commission
9	to prevent the existence or appearance of
10	any conflict of interest with respect to can-
11	didates for public office and political par-
12	ties, including standards to ensure that the
13	manufacturer and its officers and directors
14	do not hold positions of authority in any
15	political party or in any partisan political
16	campaign.
17	"(12) Prohibiting connection of system
18	OR TRANSMISSION OF SYSTEM INFORMATION OVER
19	THE INTERNET.—No component of any voting de-
20	vice upon which votes are cast shall be connected to
21	the Internet.".
22	(2) Requiring laboratories to meet
23	STANDARDS PROHIBITING CONFLICTS OF INTEREST
24	AS CONDITION OF ACCREDITATION FOR TESTING OF

VOTING SYSTEM HARDWARE AND SOFTWARE.—



1	(A) In general.—Section 231(b) of such
2	Act (42 U.S.C. 15371(b)) is amended by add-
3	ing at the end the following new paragraph:
4	"(3) Prohibiting conflicts of interest;
5	ENSURING AVAILABILITY OF RESULTS.—
6	"(A) IN GENERAL.—A laboratory may not
7	be accredited by the Commission for purposes
8	of this section unless—
9	"(i) the laboratory meets the stand-
10	ards applicable to the manufacturers of
11	voting systems under section
12	301(a)(11)(B)(iv), together with such
13	standards as the Commission may estab-
14	lish to prevent the existence or appearance
15	of any conflict of interest in the testing,
16	certification, decertification, and recertifi-
17	cation carried out by the laboratory under
18	this section, including standards to ensure
19	that the laboratory does not have a finan-
20	cial interest in the manufacture, sale, and
21	distribution of voting system hardware and
22	software, and is sufficiently independent
23	from other persons with such an interest;
24	and



1	"(ii) the laboratory, upon completion
2	of any testing, certification, decertification,
3	and recertification carried out under this
4	section, discloses the results to the Com-
5	mission.
6	"(B) AVAILABILITY OF RESULTS.—Upon
7	receipt of information under subparagraph
8	(A)(ii), the Commission shall make the informa-
9	tion available to election officials and the pub-
10	lie.''.
11	(B) Deadline for establishment of
12	STANDARDS.—The Election Assistance Commis-
13	sion shall establish the standards described in
14	section 231(b)(3) of the Help America Vote Act
15	of 2002 (as added by subparagraph (A)) not
16	later than January 1, 2006.
17	(d) Availability of Additional Funding to En-
18	ABLE STATES TO MEET COSTS OF REVISED REQUIRE-
19	MENTS.—
20	(1) Extension of requirements payments
21	FOR MEETING REVISED REQUIREMENTS.—Section
22	257(a) of the Help America Vote Act of 2002 (42
23	U.S.C. 15407(a) is amended by adding at the end
24	the following new paragraph:



1	"(4) For fiscal year 2006, \$150,000,000, except
2	that any funds provided under the authorization
3	made by this paragraph may be used by a State only
4	to meet the requirements of title III which are first
5	imposed on the State pursuant to the amendments
6	made by section 2 of the Voter Confidence and In-
7	creased Accessibility Act of 2005.".
8	(2) Permitting use of funds for reim-
9	BURSEMENT FOR COSTS PREVIOUSLY INCURRED.—
10	Section 251(c)(1) of such Act (42 U.S.C.
11	15401(c)(1)) is amended by striking the period at
12	the end and inserting the following: ", or as a reim-
13	bursement for any costs incurred in meeting the re-
14	quirements of title III which are imposed pursuant
15	to the amendments made by section 2 of the Voter
16	Confidence and Increased Accessibility Act of
17	2005.".
18	SEC. 3. ENHANCEMENT OF ENFORCEMENT OF HELP AMER
19	ICA VOTE ACT OF 2002.
20	Section 401 of such Act (42 U.S.C. 15511) is
21	amended—
22	(1) by striking "The Attorney General" and in-
23	serting "(a) In General.—The Attorney General";
24	and



1	(2) by adding at the end the following new sub-
2	sections:
3	"(b) FILING OF COMPLAINTS BY AGGRIEVED PER-
4	sons.—
5	"(1) In general.—A person who is aggrieved
6	by a violation of section 301, 302, or 303 which is
7	occurring or which is about to occur may file a writ-
8	ten, signed, notarized complaint with the Attorney
9	General describing the violation and requesting the
10	Attorney General to take appropriate action under
11	this section.
12	"(2) Response by attorney general.—The
13	Attorney General shall respond to each complaint
14	filed under paragraph (1), in accordance with proce-
15	dures established by the Attorney General that re-
16	quire responses and determinations to be made with-
17	in the same (or shorter) deadlines which apply to a
18	State under the State-based administrative com-
19	plaint procedures described in section 402(a)(2).
20	"(c) Clarification of Availability of Private
21	RIGHT OF ACTION.—Nothing in this section may be con-
22	strued to prohibit any person from bringing an action
23	under section 1979 of the Revised Statutes of the United
24	States (42 U.S.C. 1983) to enforce the uniform and non-



discriminatory election technology and administration re-2 quirements under sections 301, 302, and 303. 3 "(d) No Effect on State Procedures.—Nothing in this section may be construed to affect the availability of the State-based administrative complaint procedures required under section 402 to any person filing a complaint 6 under this subsection.". 8 SEC. 4. PERMANENT EXTENSION OF AUTHORIZATION OF 9 ELECTION ASSISTANCE COMMISSION. 10 Section 210 of the Help America Vote Act of 2002 11 (42 U.S.C. 15330) is amended by striking "each of the fiscal years 2003 through 2005" and inserting "each fiscal 12 13 year beginning with fiscal year 2003". 14 SEC. 5. REQUIREMENT FOR MANDATORY MANUAL AUDITS 15 BY HAND COUNT. 16 (a) Mandatory Audits in Random Precincts.— 17 IN GENERAL.—The Election Assistance 18 Commission shall conduct random, unannounced, 19 hand counts of the voter-verified records required to 20 be produced and preserved pursuant to section 21 301(a)(2) of the Help America Vote Act of 2002 (as

amended by section 2) for each general election for

Federal office (and, at the option of the State or ju-

risdiction involved, of elections for State and local

office held at the same time as such an election for



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1	Federal office) in at least 2 percent of the precincts
2	(or equivalent locations) in each State.
3	(2) Process for conducting audits.—The
4	Commission shall conduct an audit under this sec-
5	tion of the results of an election in accordance with
6	the following procedures:
7	(A) Not later than 24 hours after a State
8	announces the final vote count in each precinct
9	in the State, the Commission shall determine
10	and then announce the precincts in the State in
11	which it will conduct the audits.
12	(B) With respect to votes cast at the pre-
13	cinct or equivalent location on or before the
14	date of the election (other than provisional bal-
15	lots described in subparagraph (C)), the Com-
16	mission shall count by hand the voter-verified
17	records required to be produced and preserved
18	under section 301(a)(2)(A) of the Help America
19	Vote Act of 2002 (as amended by section 2)
20	and compare those records with the count of
21	such votes as announced by the State.
22	(C) With respect to votes cast other than
23	at the precinct on the date of the election (other
24	than votes cast before the date of the election

described in subparagraph (B)) or votes cast by

provisional ballot on the date of the election
which are certified and counted by the State on
or after the date of the election, including votes
cast by absent uniformed services voters and
overseas voters under the Uniformed and Over-
seas Citizens Absentee Voting Act, the Commis-
sion shall count by hand the applicable voter-
verified records required to be produced and
preserved under section 301(a)(2)(A) (as
amended by section 2) and compare its count
with the count of such votes as announced by
the State.

(3) SPECIAL RULE IN CASE OF DELAY IN REPORTING ABSENTEE VOTE COUNT.—In the case of a
State in which, under State law, the final count of
absentee and provisional votes is not announced
until after the expiration of the 7-day period which
begins on the date of the election, the Commission
shall initiate the process described in paragraph (2)
for conducting the audit not later than 24 hours
after the State announces the final vote count for
the votes cast at the precinct or equivalent location
on or before the date of the election, and shall initiate the recount of the absentee and provisional
votes pursuant to paragraph (2)(C) not later than



1	24 hours after the State announces the final count
2	of such votes.
3	(4) AVAILABILITY OF INFORMATION.—Each
4	State and jurisdiction in which an audit is conducted
5	under this section shall provide the Commission with
6	the information and materials requested by the
7	Commission to enable it to carry out the audit.
8	(b) Selection of Precincts.—The selection of the
9	precincts in a State in which the Commission shall conduct
10	hand counts under this section shall be made by the Com-
11	mission on an entirely random basis using a uniform dis-
12	tribution in which all precincts in a State have an equal
13	chance of being selected, in accordance with such proce-
14	dures as the Commission determines appropriate, except
15	that—
16	(1) at least one precinct shall be selected in
17	each county (or equivalent jurisdiction); and
18	(2) the Commission shall publish the procedures
19	in the Federal Register prior to the selection of the
20	precincts.
21	(e) Publication.—
22	(1) In general.—As soon as practicable after
23	the completion of an audit conducted under this sec-
24	tion, the Commission shall announce and publish the

results of the audit, and shall include in the an-



nouncement a comparison of the results of the elec-
tion in the precinct as determined by the Commis-
sion under the audit and the final vote count in the
precinct as announced by the State, broken down by
the categories of votes described in subparagraphs
(B) and (C) of subsection (a)(2).

(2) Delay in Certification of Results by State.—No State may certify the results of any election which is subject to an audit under this section prior to the completion of the audit and the announcement and publication of the results of the audit under paragraph (1), except to the extent necessary to enable the State to provide for the final determination of any controversy or contest concerning the appointment of its electors for President and Vice President prior to the deadline described in section 6 of title 3, United States Code.

(d) Additional Audits If Cause Shown.—If the Commission finds that any of the hand counts conducted under this section show cause for concern about the accuracy of the results of an election in a State or in a jurisdiction within the State, the Commission may conduct hand counts under this section at such additional precincts (or equivalent locations) within the State or jurisdiction as the



- 1 Commission considers appropriate to resolve any concerns2 and ensure the accuracy of the results.
- 3 (e) Availability of Enforcement Under Help
- 4 America Vote Act of 2002.—Section 401 of the Help
- 5 America Vote Act of 2002 (42 U.S.C. 15511), as amended
- 6 by section 3, is amended—
- 7 (1) in subsection (a), by striking the period at 8 the end and inserting the following: "or to respond 9 to an action taken by a State or jurisdiction in re-10 sponse to an audit conducted by the Commission 11 under the Voter Confidence and Increased Accessi-12 bility Act of 2005 of the results of an election for 13 Federal office or by the failure of a State or juris-14 diction to take an action in response to such an 15 audit.";
 - (2) in subsection (b)(1), by striking "about to occur" and inserting the following: "about to occur, or by an action taken by a State or jurisdiction in response to an audit conducted by the Commission under the Voter Confidence and Increased Accessibility Act of 2005 of the results of an election for Federal office or by the failure of a State or jurisdiction to take an action in response to such an audit"; and



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1	(3) in subsection (c), by striking the period at
2	the end and inserting the following: "or to respond
3	to an action taken by a State or jurisdiction in re-
4	sponse to an audit conducted by the Commission
5	under the Voter Confidence and Increased Accessi-
6	bility Act of 2005 of the results of an election for
7	Federal office or by the failure of a State or juris-
8	diction to take an action in response to such an
9	audit.".
10	(f) Authorization of Appropriations.—In addi-
11	tion to any other amounts authorized to be appropriated
12	under any other law, there are authorized to be appro-
13	priated to the Election Assistance Commission such sums
14	as may be necessary to carry out this section.
15	(g) Effective Date.—This section shall apply with
16	respect to regularly scheduled general elections for Fed-
17	eral office beginning with the elections held in November
18	2006.
19	SEC. 6. REPEAL OF EXEMPTION OF ELECTION ASSISTANCE
20	COMMISSION FROM CERTAIN GOVERNMENT
21	CONTRACTING REQUIREMENTS.
22	(a) In General.—Section 205 of the Help America
23	Vote Act of 2002 (42 U.S.C. 15325) is amended by strik-



24 ing subsection (e).

- 1 (b) Effective Date.—The amendment made by
- 2 subsection (a) shall apply with respect to contracts entered
- 3 into by the Election Assistance Commission on or after
- 4 the date of the enactment of this Act.
- 5 SEC. 7. REQUIREMENT FOR FEDERAL CERTIFICATION OF
- 6 TECHNOLOGICAL SECURITY OF VOTER REG-
- 7 ISTRATION LISTS.
- 8 Section 303(a)(3) of the Help America Vote Act of
- 9 2002 (42 U.S.C. 15483(a)(3)) is amended by striking
- 10 "measures to prevent the" and inserting "measures, as
- 11 certified by the Election Assistance Commission, to pre-
- 12 vent".
- 13 SEC. 8. EFFECTIVE DATE.
- Except as provided in section 6(b), the amendments
- 15 made by this Act shall take effect as if included in the
- 16 enactment of the Help America Vote Act of 2002.

